IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9579 of 1994

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GHELA RUKHADBHAI BHARWAD - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1,
MR DA BAMBHANIA for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 02/03/2006

ORAL JUDGMENT

1. This petition has been filed by the petitioner

who is a daily wager working in the Seeds Development Center at Vakaner. The petitioner avers in the petition that he joined the services of the respondents prior to 1979 and since then he is working continuously without any break. It is stated that the petitioner has made various representations to the respondent authority but till date his services have not been regularised, hence this petition.

2. I have heard Ms.Bhavika Kotecha, learned counsel appearing for the petitioner, Shri L.R.Poojari, Ld.AGP for respondent no1 and Shri J.M.Barot for respondent no.2 and I have gone through the material on record.

3. Ms. Bhavika Kotecha, learned counsel for the petitioner has drawn my attention to a Circular dated 17.10.1988 issued by the Roads & Building Department, wherein it is stipulated that daily wagers who have completed 10 years services are entitled for the benefit of regularisation. This circular has been annexed as Annexure-A to the

petition. She further submits that the petitioner has made various representations to the respondent no.2 for regularising his services since he has worked without a break, in an honest and sincere manner ever since 1979. However, vide communication dated 07.03.1993 it has been intimated that since the Seeds Farm, where the petitioner was working, has been handed over to the State Government, therefore, it was not possible for the said respondent to regularise the services of the petitioner. It is further the case of the petitioner that he should be given the benefit of Circular dated 17.10.1988 since he has worked since 1979 without any break in service.

4. Reply has been filed by respondent no.1. While denying the averments made in the petition, it has been clearly stated that the Government Resolution dated 17.10.1988 has been issued by the Roads and Building Department and applies only to those daily wagers who are working in the said department and not to other departments. Therefore, petitioner can not avail of any benefit under that resolution.

5. Respondent no.2 has also filed a reply and taken the same stand. It has been contended that the said Government Resolution is applicable only to the daily labourers of the Roads and Building Department, more particularly, who have worked for more than 240 days continuously. It has also been denied that the petitioner was working prior to 1979. In fact, the respondent no.2 has annexed the mandays chart of the petitioner from 1984 to 1992, which shows that the petitioner has not worked for 240 days in any of the calender years from 1984 to 1992. It has also been stated that the petitioner was an occasional worker and has not worked continuously in any of the calender years, during that period. As such, he cannot be given the benefit of regularisation by absorbing him as a permanent employee, since he does not fulfill the norms required for that purpose.

6. The respondent no.2 has annexed the Circular dated 30th March, 1995 to the reply filed by him, which contains the decision of the Government to

the effect that the benefits given in Roads and Building Department Resolution No.WOE-1588 (5)(3)-G.2, dated 17.10.1988 and other orders issued in this behalf from time to time, cannot be given to the daily wagers of other departments, except the departments covered under the said resolution. It has also been stated that on 31st March, 1992 the Seeds Development Center, Vakaner, has been handed over to Government, therefore, there is no question of regluarising the services of the petitioner, as far as respondent no.2 is concerned.

7. After hearing the parties and going through the materials on record, it is very clear that the petitioner is an occasional worker and has not completed 240 days in any of the calender years with effect from 1984 to 1992. Further, the benefit of Circular dated 17.10.1988 also cannot be availed of by the petitioner since it has been made clear that this circular applies only to the daily wagers working in the Roads and Building Department and not to other departments. A Full Bench of this Court has discussed the applicability of Resolution

dated 17.10.1988 in (2004) 2 GLH 302 Gujarat Forest Producers, Gatherers and Forest Workers Union Vs. State of Gujarat. While doing so, it has observed in Para:-30.6 that

> " We are, therefore, of the view that the government resolution dated 17.10.1988 is applicable to the daily wagers of the Forest and Environment Department engaged in the work of maintenance and repairs of constructions in that Department and not to the daily wagers engaged in other types of work in that department. The question no.3 referred in Special Civil Application No.8289 of 1996 and 2566 of 1997 will stand answered accordingly."

In the light of the above observations, as well, the petitioner cannot derive any benefit from the Resolution dated 17.10.1988.

8. The position regarding the period of work in any calender year of the petitioner after 1992 is not on record. Moreover, it is also not known whether the petitioner is still working under the respondent no.1 on daily wages or not. There is no material on record which can enable this Court to give any direction regarding the regularisation of

the petitioner. However, if, the petitioner is still working with respondent no.1, and Respondent No.1, after the transfer of the Seeds Farm to the Government, considers that the petitioner is eligible for regularisation under any scheme or policy formulated by the Government for daily wagers who are not covered by Resolution dated 17.10.1988, or which may be formulated in future, then it is open to the said respondent to give the petitioner the benefit of regularisation of his services, of course, subject to seniority, availability of posts and fulfillment of eligibility criteria, if any. However, in the facts and circumstances of the case, this petition cannot be accepted and no direction can be given to the respondent to regularise services of the petitioner, as prayed for.

9. The writ petition, is therefore, dismissed. It may be made clear that the dismissal of this writ petition will not come in the way of the petitioner if, after 1992, the petitioner happens to have fulfilled the norms, if any, laid down by the

Government for regularising daily wagers who have worked for a long period of time, provided that he is still working with the respondent no.1, as has already been observed above.

10. Rule is discharged without any order as to costs.

(ABHILASHA KUMARI, J.)

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